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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 351

WILLIAM J. POWERS, JR., Petitioner,

versus

PAUL SLATON, Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

WILLIAM L. WALLACE,
SCOTT REED,
404 First National Bank Building,
Lexington, Kentucky,
Attorneys for Respondent.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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No. 351

WILLIAM J. POWERS, JR., *Petitioner,*

v.

PAUL SLATON, *Respondent.*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

By way of preface to our argument in response to the petition herein of the petitioner, we think we should apprise the Court of some facts with respect to the record as brought to this Court by the petitioner and which record is to be considered in determining whether or not a writ of certiorari should be issued in this case.

The petitioner has filed as we find with the Clerk of this Court what purports to be "Transcript of Record" which does not appear to be certified by the Clerk of the lower Court and which is printed or typewritten on long sheets of paper which do not comply with the rules of this Court with respect to records to be filed therein. Also, it appears that only a portion

of the first grammatical paragraph of "Notice, Affidavit and Motions" filed by the respondent in the lower Court and not the full contents of said "Notice, Affidavit and Motions" has been filed or embodied in last above mentioned "Transcript of Record." It does appear, however, that in this last above mentioned "Transcript of Record" there has been incorporated immediately after said partial paragraph in said "Notice, Affidavit and Motions," (1) copy of the petition of L. H. Mulligan for an inquest to be held as to the sanity of William J. Powers, Jr., the petitioner herein, (2) appointment of two physicians to examine said Powers and report of their examination, (3) the hearing by a jury and the return of its verdict declaring the defendant to be of unsound mind and a lunatic and (4) the judgment of the Court adjudging said Powers to be a person of unsound mind and a lunatic and he be committed to the United States Veterans Administration Hospital.

We do not know why the petitioner herein omitted the other portions of the "Notice, Affidavit and Motions" filed by the respondent, Paul Slaton, in the District Court and which were included in the record in the Circuit Court of Appeals. However, we do find that there has been filed with the Clerk of this Court by the petitioner certified copies of petitioner's (appellant's in the lower Court) appendix and the respondent's (appellee's in the lower Court) appendix duly certified by the Clerk of the Circuit Court of Appeals as the record in this Court on which the petitioner bases his petition for a writ of certiorari.

Under the state of the record as brought here by the petitioner, we presume that we may be permitted in our argument to refer to any parts of any of the above documents, including the uncertified "Transcript of Record" as well as the certified portions of the record. And when we refer to the uncertified portion of the record as hereinabove described, we shall refer to it as "Transcript of Record" with quotation marks around the words "Transcript of Record" as here noted. When we refer to the part of the record which has been actually certified, we shall refer to same simply as "Certified Transcript of Record."

The documents which are military records and are filed in said "Transcript of Record" for the most part and, except as may hereinafter be pointed out, support the "Statement of the Case" as set out in the petition of the petitioner on pages 4 and 5 thereof, but are immaterial in this proceeding.

I.

ARGUMENT.

Rule 19 of the Supreme Court provides at "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor."

While neither controlling nor fully measuring this Court's discretion, there are set out in said Rule certain things which indicate the character of reasons which may be considered by this Court in determining

whether or not it will grant a writ of certiorari, which are as follows:

> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
>
> "(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

In this case the State Court did not decide any federal question of substance, nor did the State Court decide any federal question in a way probably not in accord with applicable decisions of this Court.

Likewise, the Court of Appeals in this case did not render a decision in conflict with any decision of any other court of appeals on the same matter. Also, the Court of Appeals did not, in this case, decide any important state or territorial question in a way in conflict with applicable state or territorial law. Also, it did not decide any important question of federal law

which has not been, but should be, settled by this Court. Also, it did not decide a federal question in a way in conflict with applicable decisions of this Court. Also, the Court of Appeals has not in its decision in any wise departed from the accepted and usual course of judicial proceedings. Nor has it so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

We, therefore, submit that there are no special or important reasons for this Court to grant a writ of certiorari when subsections (a) and (b) of Rule 19 of the Supreme Court Rules are taken into consideration.

In the lower Court the respondent requested that his motion to dismiss ("Certified Transcript of Record," petitioner's App., pages 9a-11a, inclusive—see also affidavit of respondent, Paul Slaton, in support of said motion, "Certified Transcript of Record," petitioner's App., pages 12a-14a, inclusive) for failure to state a claim be treated as a motion for summary judgment under Rules 12(b) and 56 of FRCP, which motion was sustained and the cause was submitted for summary judgment.

The petitioner's complaint is found in "Transcript of Record," pages 2-7, inclusive, and pages 1a-8a, inclusive, in "Certified Transcript of Record."

In support of said motion for summary judgment, the respondent's argument in his brief in the lower Court was as follows:

> "The complaint, as a whole, is confined against the defendant, Paul Slaton, individually; it contains two counts, and is so interspersed with

breaches, implications and conclusions that an analysis of its factual averments is rendered difficult. It would have been more helpful had the averments been made, in accordance with Rule 8, simple, concise and direct. Aside from the averments made as to diversity and amount involved, paragraphs 5 and 6 of Count I are more comprehensible than the remaining paragraphs.

"In paragraph 5 of Count I, the complaint alleges that since September 1949, to the present day, the defendant, Paul Slaton, has 'held *himself* out as the lawfully appointed committe of plaintiff.' And in paragraph 6 of Count I, the complaint alleges that the defendant, 'Paul Slaton, persisted 'in holding *himself* out' to the Army Finance Center as having been lawfully appointed to represent the plaintiff by committee, and as a result received a sum of money from the U. S. Treasurer in excess of $19,000.00 belonging to plaintiff as retired army officer's pay, and that defendant refused, and continues to refuse to surrender said money to plaintiff even though plaintiff has demanded such surrender.

"A gap occurs at this point in the complaint. It is nowhere averred that the alleged appointment of defendant, Paul Slaton, as committee for plaintiff was made by an order or judgment of the Fayette County Court, or any other court. *No specific judgment of the Fayette County Court is mentioned, referred to or attacked.* Notwithstanding that fact, in paragraph 4 of the prayer of the complaint the defendant asks this Court:

"To further declare that the alleged judgment and order of the County Court of Fayette

County, Kentucky, appointing the defendant as committee for plaintiff, was and is null and void ab initio, and to no force and effect.'

"Although the complaint is absolutely silent as to the 'alleged judgment and order of Fayette County appointing defendant as committee,' and contains no averments that such a judgment was ever actually entered by that court, the complaint proceeds to aver that such judgment was null and void '*if*' it was ever entered.

"Paragraphs 8, 9, 12 and 13 of Count I plead that '*if*' the defendant was appointed by order of any court, such appointment would have to be made by the Fayette County Court at Lexington, Kentucky. But no facts are stated why plaintiff concluded that such appointment had to be made in Fayette County, Kentucky. Undoubtedly, if the alleged appointment was made in Fayette County, Kentucky, it would have to be made by judgment or order of the Fayette County Court because KRS 25.110, cited by plaintiff, would give the Fayette County Court exclusive jurisdiction to make appointment of committees and successor committees in Fayette County, Kentucky. But the plaintiff does not allege in the body of his complaint that defendant was appointed as committee by any judgment or order of the Fayette County Court. It is further averred in said paragraphs of Count I that '*IF*' the Fayette County Court had entered an order appointing defendant as committee for plaintiff, that court had no jurisdiction to make the appointment by virtue of KRS 387.025, 387.210 and 387.220 relating to requests and applications for appointment of committees of persons adjudged to be of unsound

> mind, because, plaintiff alleges in paragraphs 1, 2 and 3 of Count I that he was at the time of any such alleged order not a resident of Fayette County or of the State of Kentucky but was physically absent therefrom, and was domiciled and a resident of the State of Illinois."

In Rule 56(c) of FRCP, relating to summary judgments, it is stated:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

No depositions were filed. No judgment or order is alleged or shown by plaintiff under which defendant was ever appointed as committee of plaintiff. Furthermore, the aforesaid "*IF*" allegations made by plaintiff, by implication, admit that the defendant was never appointed as such committee and are nothing more than hypothetical statements of a case which does not in fact exist. The defendant, as shown by the order of the Fayette County Court ("Certified Transcript of Record," respondent's-appellee's App., pages 19b-20b, inclusive), was not appointed committee for plaintiff and has not at any time held himself out or acted as any such committee and has not at any time received any funds or property from any source in his individual capacity for the use or benefit of, or belonging to, the plaintiff ("Certified Transcript of Record," petitioner's-appellant's App., pages 12a-14a, inclusive).

The petitioner's wife was the original petitioner for the appointment of a committee for the petitioner herein ("Certified Transcript of Record," page 13b, being respondent's App., page 13b in Circuit Court of Appeals) and she was duly appointed and qualified as such committee for petitioner herein ("Certified Transcript of Record," pages 15b-16b, inclusive, being said pages of App. to appellee's brief in Circuit Court of Appeals). Upon her resignation as such committee, and submission of her final settlement as such, she petitioned for the appointment of a successor committee ("Certified Transcript of Record," pages 16b-18b, inclusive, being those pages in the App. of appellee's brief in Circuit Court of Appeals).

The County Court thereupon appointed Citizens Bank and Trust Company, the name of which has been changed to the Citizens Union National Bank and Trust Company, as a successor committee to the wife of the petitioner herein. Whereupon, said Bank and Trust Company was duly qualified ("Certified Transcript of Record," pages 18b-20b, inclusive, being said pages in the App. of appellee's brief in Circuit Court of Appeals). This the County Court had a right to do under KRS 387.090 which provides that:

> "*When it appears proper, the Court may permit him (referring to guardian) to resign his trust of he first settles his accounts and delivers over the estate as by the Court directed. In either case, or when from any cause there is a vacancy in the office of guardian, the Court may appoint a guardian.*" (Italics and parentheses ours)

It will be seen that the respondent was never at any time appointed committee and did not petition that he be appointed. In fact, he was in no way involved or connected with any of the lunacy proceedings and nothing done therein could be attributed to him. (Affidavit of respondent, Paul Slaton, in support of motion for summary judgment filed in Appendix "A" of this brief of the respondent). Neither was the appointment of said Bank as committee brought about by any act of his. He as an individual has received no money of the petitioner and has never at any time as an individual held any money from the petitioner herein. Nor has anything been shown in the record in this cause manifesting any negligence whatsoever on the part of the respondent herein.

In fact the petitioner, in his brief on page 21 thereof, claims that the "fault in this case was the negligence of the office of the Adjutant-General of the Army" and that that office had the duty of returning the petitioner to the state of his legal residence in Illinois and his home in Chicago upon his relief from active duty in the Army.

Also, the petitioner states on that same page in his brief that "the Manager of the Veterans Hospital compounded the negligence of the Adjutant-General's office by not independently determining the legal residence of the plaintiff and by confining the plaintiff in the hospital without legal authority."

Therefore, we submit that in view of the allegations of the petitioner's complaint and the matters outside said pleading which were presented to and

not excluded by the Court, it has been shown that the complaint did not, in fact, state a claim against the respondent herein upon which relief could be granted; that the motion to dismiss was properly treated as one for summary judgment and disposed of as provided in Rules 12(b) and 56 of FRCP, independent of any federal question or constitutional provisions; that there was no genuine issue as to any material fact which would entitle petitioner to a declaratory judgment against the respondent, individually; that the latter was properly adjudged to be entitled to a summary judgment dismissing petitioner's action.

II.

THE STATE COURT HAD JURISDICTION OVER THE UNITED STATES VETERANS ADMINISTRATION HOSPITAL IN KENTUCKY WITH RESPECT TO LUNACY PROCEEDINGS AGAINST AN INMATE IN SAID HOSPITAL.

The lunacy proceedings herein dealt with were held in accordance with provisions of the Uniform Veterans' Guardianship Act which was adopted by the Kentucky Legislature and which is Chapter 388 of Kentucky Revised Statutes.

As stated in 56 Am. Jur., Veterans and Veterans' Acts, in the 1963 Supplement thereof, at page 16, it is stated:

> "The Uniform Veterans' Guardianship Act, either in its original or amended form, has been adopted by a number of states. Other states have adopted some, but not all, of the provisions

of the original or revised act. This legislation does not cover completely the law of guardian and ward as applied to beneficiaries of the Veterans' Administration, but is intended to supplement the general laws with respect to a few special problems and to eliminate a few evils which are common in handling a ward's estate under general state laws. Another purpose of the act is to provide a simple method of securing the appointment of a guardian without the notoriety and the practical difficulties which often attend the appointment of a guardian under the general laws.

"The constitutionality of the Act has been upheld as against the contentions that it is unconstitutional special legislation and permits the status of a person to be fixed without due process of law.

"The act contains provisions intended to secure a liberal and uniform construction."

It is provided in that Act, KRS 388.360, that:

"This Act shall be construed liberally to secure the beneficial intents and purposes thereof and shall apply only to beneficiaries of the Veterans administration."

In said Act, KRS 388.380 it is provided:

"All laws or parts of laws relating to beneficiaries of the Veterans Administration inconsistent with this Act are hereby repealed. Except where inconsistent with this Act, the general guardianship laws of this State and the laws establishing the practice in such matters including rights of appeal, shall be applicable to such beneficiaries and their estate."

In said Act, KRS 388.250 it is further provided:

"Notwithstanding the provisions of existing law for adjudication of incompetency and appointment of a committee upon the inquest of a jury, where a petition is filed for the appointment of a committee for a mentally incompetent beneficiary of the Veterans Administration under the provisions of this Act, *who is found within this state, whether or not a resident thereof,* a certificate of the Administrator of Veterans Affairs or his duly authorized representative, accompanying such petition setting forth the fact that such beneficiary has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing such Veterans Administration, and that the appointment of a committee is a condition precedent to the payment of any moneys due each beneficiary by the Veterans Administration, *shall be prima facie evidence of the necessity for such appointment.* Provided, however, that some member of the bar shall be appointed by the Court to represent and protect the interests and rights of such incompetent beneficiary as provided under existing law, and further that the right of any such incompetent beneficiary or any person interested in such beneficiary to demand a trial by jury shall not be denied." (Italics ours.)

As stated in 54 Am. Jur., Section 88, page 602:

"With growing frequency the Federal government leaves largely unimpaired the civil and criminal authority of the state over national reservations or properties. *The desirability of*

permitting the state to retain jurisdiction for local purposes involving no interference with performance of governmental duties is becoming more and more evident as the activities of the government expand; the United States should not be compelled to exercise exclusive jurisdiction over all property it acquires." (Italics ours.)

The lunacy proceedings of which petitioner complains in no wise involved any interference with the performance of governmental duties with respect to veterans. The states which have adopted the Uniform Act have therein enacted special provisions concerning veterans and several states have amended certain provisions of the Uniform Act. This Act does not completely cover the law of guardian and ward with respect to beneficiaries of the Veterans Administration, but is intended to supplement the general laws of this state with respect to a few special problems "and to eliminate a few evils which are common in handling a ward's estate under general state laws" (173 ALR. Anno. page 1064).

"It is now settled that the jurisdiction acquired from a state by the United States whether by consent to the purchase or by cession may be qualified in accordance with agreements reached by the respective governments. The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occu-

pants of the territory transferred. This assures that no area however small will be left without a 100, 84 L. Ed. 596-600)."

developed legal system for private rights" (James Stewart & Company v. Sadrakula, 309 U. S. 99,

Also in Hines v. Stein, 298 U. S. 94, 98, this Court states:

> "During many years, Congress has recognized the propriety, if not the necessity, of entrusting the custody and management of funds belonging to incompetent pensioners to fiduciaries appointed by state courts, without seeking to limit judicial powers in respect to them."

The Uniform Veterans' Guardianship Act was enacted by the Kentucky Legislature in 1942 and became effective June 1, 1942. The consent of the Commonwealth of Kentucky to the acquisition by the United States of all lands and appurtenances for certain purposes, including "other needful buildings," in that state theretofore legally acquired was not given until the enactment of KRS Section 3.010 in 1944 as shown by Appendix "K" of petitioner's petition herein. Therefore, under this Court's holding in the Sadrakula case, the state retains its jurisdiction over the Veterans Administration property and Powers, an occupant of that territory, so long as it did not interfere with the purposes of the United States respecting its administration of the affairs of veterans. This it evidently did not do as it was at the instance of the Veterans Administration that the lunacy proceedings

were initiated and prosecuted to conclusion as shown by the affidavits of Dr. Schwartz, Ward Physician, and Dr. S. R. Baker, Clinical Director, of the Veterans Administration Hospital, Lexington, Kentucky ("Certified Transcript of Record," 2b).

> "The Veterans' Administration is an independent establishment in the executive branch of the Government, especially created for or concerned in the administration of laws relating to the relief and other benefits provided by law for veterans, their dependents, and their beneficiaries" (38 U. S. C. A., page 69, Section 201).

The Administrator of Veterans Affairs is the head of the Veterans Administration and as such head has the following broad powers:

> "Except to the extent inconsistent with law, he may consolidate, *eliminate*, abolish, or redistribute the *functions* of the bureaus, agencies, offices, or activities in the Veterans' Administration, *create* new bureaus, *agencies*, offices, or *activities* therein, *and fix the functions thereof and the duties and powers of their respective executive heads.*" (Italics ours.)

The Administrator's office is empowered to make regulations, necessary or appropriate, to carry out the laws administered by the Veterans Administration such as are consistent therewith, including regulations with respect to "*the methods of making investigations and medical examinations, and the manner and form of adjudications and awards*" (38 U. S. C. A., page 71, Section 210, Subsection (b), and (c)). (Italics ours.)

It must be presumed that aforesaid Ward Physician and Clinical Director who initiated the lunacy proceedings were acting under the authority of the Administrator of Veterans Affairs as executive heads or representatives of the Government when they gave their affidavits to provide the state Court with jurisdiction to secure information regarding the competency or incompetency and the necessity for the commitment of power and the appointment of a committee for him.

These affidavits, in fact, described the form of adjudications which the Government desired with respect to the mental condition of the petitioner herein. Therefore, it would follow that if there had ever been any ceding of jurisdiction in this matter by the State to the Federal Government, the Federal Government through the executive agency of the Administrator of Veterans Affairs re-ceded its jurisdiction to the State.

We know of no authority which would justify the view that Congress intended to deprive the state Courts of such jurisdiction as has been exercised by the state Courts in this cause.

Furthermore, it has been the general custom and usage for lunacy proceedings to be initiated and instituted and held as was done in this case with respect to inmates of the Veterans Hospital, Lexington, Kentucky, ever since that hospital was established until the present time during which period there have been hundreds of such lunacy proceedings held as was this one in the Fayette Circuit Court at Lexington, Kentucky, with respect to such inmates; and this is the first time to the knowledge of these defendants that

any questions such as raised in this action have been raised relative thereto. We challenge the petitioner to disprove this statement.

It also should be noted with respect to this question to jurisdiction that it is provided in KRS Section 3.010 as follows:

> "The Commonwealth of Kentucky consents to the acquisition by the United States of all lands and appurtenances in this state, by condemnation, gift or purchase, which are needful to their constitutional purposes, *but said acquisition shall not be deemed to result in a cession of jurisdiction by this Commonwealth.* (1954 c. 217, Sec. 1, Eff. 6-17-54. 1944 c. 173, Sec. 1.)" (Italics ours.)

III.

THE PETITIONER WAS IN FACT SERVED WITH PROCESS AS PROVIDED BY KRS, SECTION 202.060.

After the institution of this present action on the 17th day of July, 1961, against Paul Slaton, as the lone defendant, in the Court below, the petitioner herein on June 7, 1962, filed his second Civil Action No. 1479 in the United States Court for the Eastern District of Kentucky against Paul Slaton, the respondent herein, and also against the Citizens Union National Bank and Trust Company, individually, and as committee de son tort, and all of the Directors of said Bank.

Mr. Powers's petition in the second action made practically the same allegations as made in his peti-

tion in this present action in which he sued only Paul Slaton, except that he made the allegations against not only Paul Slaton, but also against said Bank and all of its Directors. His prayer in the said second action was (1) that he be granted a jury trial, (2) that the Bank be required to surrender to him moneys which they had received as committee for him, together with Six (6%) Per Cent interest thereon for the length of time they have kept such moneys in their possession, (3) that the defendants be enjoined from representing to any one that they have ever performed any service of value to the plaintiff or acted as his agent, (4) that he be awarded $250,000.00 for damage and harm caused to him by the defendants generally and the gross negligence of the Directors of the Bank in particular, and (5) that he be granted such other and further relief as may be proper according to the customs and usages of law. (See App. "B" of this response).

The petitioner herein undoubtedly knows that he was actually given notice of the inquest to determine his mental condition and was actually duly summoned as required by KRS 202.060 as is shown by Appendix "C" of this response, which is a certification by the Clerk of the United States District Court for the Eastern District of Kentucky of the summons to William J. Powers and Manager, F. M. Cook, M. D., of the said Veterans Administration Hospital issued on June 5, 1947, and served by the sheriff of Fayette County, Kentucky, on William J. Powers June 6, 1947, in the United States Veterans Hospital and served also on June 6, 1947, on Dr. F. M. Cook, M. D., Manager of

said Veterans Hospital, the latter being the person having charge of said Powers. This document was, as shown by said certification, filed as Exhibit No. 3 with the deposition of Katherine M. Laden in the above mentioned case, No. 1479 by Powers, plaintiff, against Paul Slaton, the aforesaid Bank and its Directors.

The complaint of the petitioner with respect to his commitment for a thirty-five day period, to which he refers in his brief on page 26 thereof, is entirely irrelevant and has no place in this cause, as, at the time of the initiation and institution of the lunacy proceedings and the service of summons on him and the person having him in charge as hereinabove shown, the petitioner was already in the custody of the Veterans Administration and confined in the aforesaid Veterans Hospital. Therefore, there was no reason for any commitment of him by any state authority as he had already been committed to said hospital under the authority of and by the agents of the Federal Government.

Therefore, we submit that no rights of the petitioner have been violated under the due process clauses or any other provisions of the Fifth Amendment or Fourteenth Amendment of the Constitution of the United States, or under any of the provisions of Article IV, Section 2 or the Fouth Amendment of the Constitution of the United States or of any sections as designated by the petitioner of the Bill of Rights of the Constitution of the Commonwealth of Kentucky.

In the case of Chaloner v. Sherman, 242 U. S. 455, the facts in which appear to be identical with the facts

of our present case as relate to notice to Powers and the lunacy proceedings in which he was adjudged an incompetent in this cause, Justice Brandeis, in the opinion of this Court as to plaintiff's adjudication as an incompetent, stated as follows:

> As the plaintiff had notice and opportunity to be heard at each stage of these proceedings, the essential elements of due process of law were fully met, and the court had jurisdiction to enter that order. It is not open to collateral attack, although plaintiff was then under commitment at Bloomingdale." See also Simon v. Craft, 182 U. S. 427; 45 L. Ed. 1165.

IV.

CONCLUSION.

It may be of interest to the Court to know that the above mentioned case of William J. Powers, Jr. v. Citizens Union National Bank and Trust Company and all of its Directors and against the respondent, Paul Slaton, Civil Action No. 1479 in the United States District Court for the Eastern District of Kentucky was decided against the petitioner herein in the opinion of last mentioned Court rendered on September 25, 1963, in which, as hereinabove stated, virtually all of the allegations were made against the defendants in that case as made by the petitioner herein in this present cause. This statement of fact we are sure the petitioner will not deny as he is thoroughly familiar with the records in that case.

As stated by the United States Court of Appeals for the Sixth Circuit in its opinion in this case "the courts of the Commonwealth of Kentucky afford adequate remedies to a party seeking a determination as to the validity of State Court proceedings." We therefore submit that the writ of certiorari sought by the petitioner should not be granted and that his petition should be dismissed.

Respectfully submitted,

WILLIAM L. WALLACE,
SCOTT REED,
404 First National Bank Building,
Lexington, Kentucky,
Attorneys for Respondent.